



MAY 26 1920

JAMES D. BAKER,  
CLERK

No. 357

**In the Supreme Court of the United States.**

OCTOBER TERM, 1919.

HARRY B. THOROW, AS UNITED STATES ATTORNEY  
FOR THE DISTRICT OF COLORADO, APPELLANT,

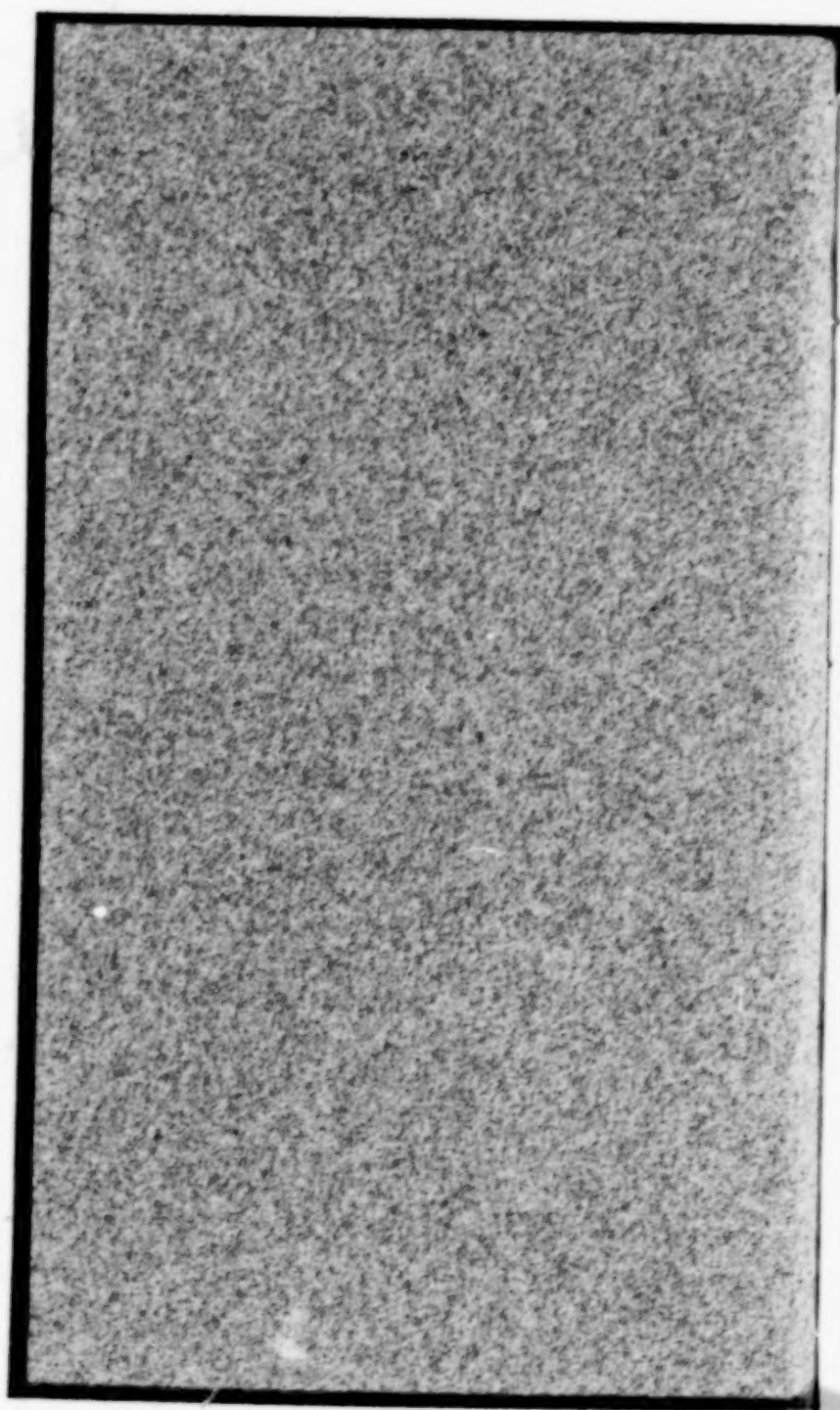
v.

THE A. T. LEWIS & SON DRY GOODS COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF COLORADO.

MOTION ON BEHALF OF APPELLANT TO ADVANCE.

WASHINGTON : WESTERN PRINTING OFFICE : 1919



# In the Supreme Court of the United States.

OCTOBER TERM, 1919.

HARRY B. TEDROW, AS UNITED STATES  
Attorney for the District of Colorado,  
appellant,

v.

THE A. T. LEWIS & SON DRY GOODS COM-  
pany et al.

No. 952.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF COLORADO.*

## **MOTION ON BEHALF OF APPELLANT TO ADVANCE.**

Comes now the Solicitor General, on behalf of the appellant, and respectfully moves the advancement of the above-entitled cause for early hearing during the October, 1920, term of this court.

The appellees, dealers in wearing apparel, doing business in the State of Colorado, filed in the court below a bill in equity seeking to enjoin the appellant, as United States Attorney, from enforcing against them the provisions of the act of August 10, 1917, chapter 53, section 4 (40 Stat. 277), commonly known as the Lever Act, as amended by the act of October 22, 1919, Title I, section 2 (41 Stat. 298), making it unlawful for any person to exact any unjust, unreasonable, or

excessive rate, charge, or price for any necessary, and authorizing fine or imprisonment, or both, for violation of its terms. Wearing apparel is declared a necessary by the amendment of 1919.

The bill alleged, among other things, that appellees <sup>lvs</sup> had in their stocks of merchandise numerous articles which had been purchased when prices were comparatively low and which had since increased considerably in value; that it was their position that in fixing rates and charges for said goods the actual value thereof at the time of said fixation should be taken as the standard in determining a fair selling price, but that the United States Attorney, entertaining the view that the original cost price should be taken into consideration, had threatened criminal prosecution; and that the increment in the value of said goods was private property, of which they could not be deprived without due process of law, under the fifth amendment to the Constitution of the United States. The legislation in question was also assailed as being unconstitutional upon other grounds.

The United States Attorney, while admitting in his answer that in fixing a fair price for the merchandise carried by the appellees regard should be had in some instances to the original cost price, asserted that in other instances the actual market value at the time of sale should be the standard.

Upon final hearing, the preliminary injunction which had been theretofore issued was made per-

manent, the court ruling that said Lever Act, as amended, was unconstitutional.

Some of the Federal courts which have passed upon the legislation in question have upheld its constitutionality, while others have ruled adversely thereto. The result is much confusion and uncertainty in the conduct of cases under this law, to the embarrassment of the Government and the public. It is, therefore, important that an early hearing may be had in this case.

Counsel for the appellees concur in this request for advancement.

ALEX. C. KING,  
*Solicitor General.*

JUNE, 1920.

